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April 2, 2004

Hon. Deborah Taylor Tate, Chairman  
Tennessee Regulatory Authority  
400 James Robertson Parkway  
Nashville, TN 37243

RE: Joint Petition for Arbitration of an Interconnection Agreement with BellSouth  
Telecommunications, Inc. Pursuant to Section 252(b) of the Communications Act  
of 1934, as Amended, Tennessee Regulatory Authority Docket No. 04-00046

Dear Chairman Tate:

On March 25, 2004, BellSouth filed a letter in this proceeding in which it falsely accused Joint Petitioners of making contentions which "misrepresent either Orders of other Commissions or of the Authority." Joint Petitioners regret having to file more correspondence for the Authority to read, but BellSouth's false accusations that counsel engaged in misrepresentations must be addressed.

In their March 22, 2004 filing, Joint Petitioners stated, "No state has granted BellSouth's motion to sever." That was true then and is true today. BellSouth's assertion that Joint Petitioners' statement is not true is simply false. Indeed, BellSouth's letter does not point to a single Commission order that grants its motion to sever.

Moreover, Joint Petitioners explained the decisions of the two commissions that as of that point in time had ruled on the motion to sever. At that point, the Alabama Commission had effectively denied the motion to sever in an order which BellSouth has filed in this docket. The South Carolina Commission also had ruled to deny the motion to sever, but has released no decision yet. Since our filing, the North Carolina Commission released an order denying the motion to sever, as well. Joint Petitioners filed a copy of that order in this proceeding on March 24, 2004.

In its March 25 letter, BellSouth misquotes Joint Petitioners' statement. BellSouth capitalizes "Motion to Sever," whereas CLECs referred only to the "motion to sever." Although

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subtle, the difference is significant. Joint Petitioners' statement pertained only to the motion to sever sought by BellSouth. Indeed, all of footnote 1 in Joint Petitioners' March 22 filing is plainly devoted to the part of BellSouth's filings devoted to support its motion to sever. BellSouth apparently substitutes "Motion to Sever" as shorthand for its initial filing including both its motion to sever and its alternative motion to impose procedural restrictions. Joint Petitioners made no attempt in that footnote to refer to both aspects of that filing or to say what the Alabama or South Carolina Commissions did with respect to BellSouth's alternative motion.

In their March 22, 2004 filing, Joint Petitioners stated. "The Alabama Public Service Commission issued an order on March 16, 2004 effectively denying BellSouth's motion to sever." That also was true then and it remains true today. BellSouth's assertion that Joint Petitioners' statement is not true is simply false. Indeed, BellSouth's March 25 letter contradicts itself by acknowledging that "the Alabama Commission did not order the severance of this proceeding into four separate proceedings."

For a second time in its March 25 letter, BellSouth misquotes Joint Petitioners' statement. One aspect of the misquote is trivial (adding the word "that" and de-capitalizing "The"), the other is the same material misquoting discussed above (BellSouth replaces "motion to sever" with "Motion to Sever"). Again, Joint Petitioners spoke only to the motion to sever and not to BellSouth's entire "Motion to Sever" filing (as BellSouth now has taken to calling it) including its alternative motion to impose procedural restrictions, as well as its motion to dismiss Joint Petitioners' Joint Petition and to deny Joint Petitioners' request for a limited and temporary waiver of certain aspects of the Alabama "T rules."

Contrary to the assertion made by BellSouth in its March 25 letter, Joint Petitioners made no contention with respect to how the Alabama Commission disposed of any other aspect of BellSouth's alternative motion for procedural restrictions (or its other motions). Thus, BellSouth's statement that Joint Petitioners had made any such contention (and that it was wrong) is not correct.

Notably, Joint Petitioners had carefully avoided making any representation with respect to how the Alabama Commission disposed of BellSouth's alternative motion to impose procedural restrictions. In Alabama, as in all other states, two of the three "restrictions" requested by BellSouth have never been an issue. Joint Petitioners presented a single CLEC Position for each issue with their Joint Petition and then voluntarily agreed to cross-examine Bell witnesses only once per issue or sub-issue.

The only "restriction" at issue is the Petitioners' right to present company-specific witnesses in support of the joint CLEC Position. On this point, the Alabama Procedural Order states: "Petitioners may sponsor one witness per issue or subissue." Procedural Ruling at 4,

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Docket 29242, Alabama Public Service Commission. In this context, the word "Petitioners" could be read to mean "each of the Petitioners" or "Petitioners as a group." It quickly became apparent that the Joint Petitioners read it one way ("each of the Petitioners") and that BellSouth read it another way ("Petitioners as a group"). Thus, Joint Petitioners filed a Motion for Clarification with the Alabama Commission. Joint Petitioners prevailed. As in North Carolina, Joint Petitioners will be filing consolidated joint and company-specific testimony in Alabama (due April 6 in Alabama and April 30 in North Carolina). Procedural Ruling at 2, Docket 29242, Alabama Public Service Commission (March 30, 2004) (attached hereto).

Notably, BellSouth misquotes the Alabama Commission and its order. BellSouth states that the Alabama Commission, "in pertinent part," said:

Petitioners' position must be identical on each issue. Petitioners may sponsor one witness per issue or subissue.

However, what the Alabama Commission actually said was

**Petitioners** position must be identical on each common issue.  
**Petitioners** may sponsor one witness per issue or subissue.

**Joint Petitioners** may cross-examine each of BellSouth's witnesses only once.

Procedural Ruling at 4, Docket 29242, Alabama Public Service Commission (Mar 16, 2004) (bolding added to show emphasis, underlining added to show BellSouth's misquotes and omissions)

As stated above, on March 30 the Alabama Commission settled this controversy by ruling that Joint Petitioners will be allowed "to file consolidated and integrated testimony which will permit each CLEC representation on each issue" and thereby granted the relief sought by the Joint Petitioners in their Motion for Clarification. Procedural Ruling at 2, Docket 29242, Alabama Public Service Commission (Mar 30, 2004) (attached hereto).

Finally, BellSouth asserts that Joint Petitioners misrepresented an order of the Authority. Joint Petitioners did no such thing. Instead, Joint Petitioners simply said:

Joint Petitioners emphasize the following facts supporting a joint arbitration proceeding.

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- There is precedent The TRA is presently conducting a Joint Arbitration with twenty-six (26) parties: five (5) Commercial Mobile Radio Servers and twenty-one (21) rural carriers, Docket No. 03-00585

Joint Petitioners said nothing about any order of the Authority in that case and made no attempt to discuss how it came to be. Joint Petitioners' point simply was that the Authority had experience with multi-party arbitrations that are apparently far more complex than this one

In conclusion, Joint Petitioners reiterate that no misrepresentations were made by Joint Petitioners and that BellSouth misquoted and misconstrued Joint Petitioners' positions as well as the Alabama Procedural Order

Sincerely,



H LaDon Baltimore

John J Heitmann

*Co-Counsel for Joint Petitioners*

LDB/dcg

cc. Richard Collier, Esq , General Counsel  
Guy Hicks, Esq



**STATE OF ALABAMA**  
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WALTER L. THOMAS, JR.  
SECRETARY

In the Matter of ) Docket No. 29242  
)  
Joint Petition for Arbitration of )  
)  
NewSouth Communications Corp., KMC )  
Telecom V, Inc., KMC Telecom III LLC, )  
and Xspedius Communications, LLC on )  
Behalf of its Operating Subsidiaries, )  
Xspedius Management Co. Switched )  
Services LLC, Xspedius Management Co. )  
of Birmingham LLC, Xspedius Management )  
Co. of Mobile LLC, and Xspedius )  
Management Co. of Montgomery LLC. )  
)  
Of an Interconnection Agreement with )  
BellSouth Telecommunications, Inc., )  
Pursuant to Section 252(b) of the )  
Communications Act of 1934, as Amended )

Procedural Ruling

On March 24, 2004, NewSouth Communications Corp., KMC Telecom V, Inc., KMC Telecom III LLC and Xspedius Communications LLC on behalf of its operating subsidiaries, Xspedius Management Co. Switched Services LLC, Xspedius Management Co. of Birmingham LLC, Xspedius Management Co. of Mobile LLC, and Xspedius Management Co. of Montgomery LLC filed a Joint Motion for clarification of Procedural Ruling in the above referenced matter.

The Joint Motion requested that the Arbitration Panel provide clarification of the statement "Petitioners may sponsor one witness per issue or sub issue." Further the Petitioners requested that the Procedural Ruling be clarified to state that each Petitioner may sponsor one witness per issue or sub issue. Petitioners requested this clarification in order to preserve their right to present witnesses on each issued raised.

cc: J. Heitman + J. Elmi  
3/30/04

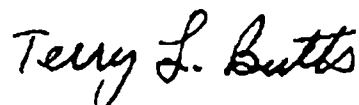
Petitioners stated that in order to present company specific testimony and to avoid hearsay testimony, the above clarification was necessary. In addition, the Petitioners indicated that at most there would be nine Competitive Local Exchange Carrier (CLEC) witnesses in their case and that the presentation of their testimony would be in a consolidated and integrated approach on all issues.

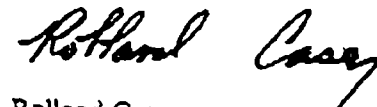
The Arbitration Panel is not attempting to deny any party its due process nor is it requesting that any party waive its rights to present testimony. Neither is the panel inviting hearsay testimony. The panel does want the hearing process to proceed as quickly as possible without undue complications or duplication of effort. Thus the panel will allow Joint Petitioners to file consolidated and integrated testimony which will permit each CLEC representation on each issue.

IT IS SO RULED.

DATED at Montgomery, Alabama this 30th day of March, 2004.

  
Larry S. Smith

 with permission  
Justice Terry L. Butts

  
Rolland Casey